

REMARKS

This is responsive to the Office Action mailed on June 3, 2005. In that Office Action, claims 1, 2, 5, 7-13, 5-20 and 23-31 were rejected, claims 6, 14 and 21 were withdrawn from consideration and claims 3, 4 and 22 were objected to. With this Amendment, claims 1, 4, 8 and 10 are hereby amended. The subject of claim 3 is incorporated into claim 1 and therefore claim 3 is canceled, and withdrawn claims 6, 14 and 21 are canceled to facilitate a Notice of Allowance since it is believed that the claims are now all in allowable form.

The Office Action noted that on page 1, line 27, that applicant had an invalid Patent No. Page 1, line 27 has been amended to insert the correct Patent No. which is 5,792,046.

The Office Action also rejected claims 10-13 and 15 under 35 U.S.C. § 112, second paragraph, as being indefinite due to the phrase "the shaft" lacking antecedent basis. Claim 10 has been amended to provide antecedent basis to the word "shaft". It is respectfully requested that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

The Office Action rejected claims 8 and 9 under 35 U.S.C. § 102(b) as being anticipated by the Gauthier U.S. Patent No. 3,965,890. The Office Action alleged that Gauthier discloses a surgical clamp having a first clamping member M with a bore, a support member A' received in a bore of member M, a pawl 13 pivotally coupled to member M and cooperating with grooves 12 on support member A' (Figs. 3, 9 and 14-16, col. 4, lines 1-68 and col. 5, lines 1-39)..

Claim 8 has been amended to state that the first and second legs that define the clamping bore are movable between a clamping and a non-clamping position. The Gauthier patent neither teaches nor describes such a clamp. The clamp in Gauthier has a thumb screw 10 that engages the clamp through a threaded bore with the end of the thumb screw engaging the member to be clamped A'. A pawl 13 extends through one of the non-movable sides of the clamp to engage teeth 12 that are disposed on the member A'. There is no teaching or suggestion in Gauthier how to include a pawl in a clamp in which the legs are movable between a clamping position and a non-clamping position. If the legs of Gauthier were movable between a clamping and a non-clamping position, the pawl would not engage the teeth in the member to be clamped.

In view of the above, it is believed that as amended, independent claim 8 is now in allowable form along with its respective dependent claim 9.

Next, the Office Action rejected claims 1-2, 7, 16-19 and 23-32 under 35 U.S.C. § 102(e) as being anticipated by Winqvist et al. U.S. Patent No. 6,613,049. The Office Action alleged that Winqvist et al. discloses a clamping assembly (60 or 90) including first and second clamping members which have a plurality of raised portions in the bore to retain a rod.

Independent claim 1 has been amended to include the subject matter of claim 3 which has been noted in the Office Action to contain patentable subject matter.

Independent claims 16 and 23 state that the raised portions have arcuate surfaces. The ridges shown in Winqvist et al. do not have arcuate surfaces. The ridges shown in Winqvist et al. have a triangular shape with straight surfaces. The ridges are shown in Figures 9-14, 23 and 24 of Winqvist et al. The shape of the ridges are best seen in Figures 13 and 24. It is clear, that the surfaces that form the ridges are flat surfaces or straight surfaces and not arcuate surfaces. Therefore, independent claim 16 and 23 are allowable over Winqvist et al. along with their respective dependent claims, and reconsideration and allowance of claims 1-2, 7, 16-19 and 23-31 are respectfully requested.

Next, the Office Action rejected claims 1, 5 and 7 under 35 U.S.C. § 102(e) as being anticipated by the Phillips U.S. Patent No. 6,736,775. As mentioned above, claim 1 has been amended by including the subject matter of claim 3 which was indicated to be allowable subject matter. In view of this amendment, it is respectfully requested that the rejection of claims 1, 5 and 7 under 35 U.S.C. § 102(e) in view of the Phillips patent be reconsidered and the claims allowed.

Lastly, the Office Action rejected claims 2 and 16-20 as being unpatentable over Phillips in view of Roussouly et al. U.S. Patent No. 5,810,817.

Since claim 2 depends from claim 1, and claim 1 now is in allowable form, the rejection under 35 U.S.C. § 103 of claim 2 is respectfully requested to be withdrawn and the claim allowed.

Regarding independent claim 16 and its respective dependent claims 17-20, neither Phillips teach or suggest ridges having arcuate surfaces as claim 16 states. All of the ridges shown in either Roussouly et al. or the Phillips patent are ridges that are formed by flat surfaces or straight surfaces. Therefore, in view of the above, the rejection of claims 16-20 under 35 U.S.C. § 103(e) is requested to be withdrawn and the claims allowed.

In view of the above, reconsideration and allowance of all of the rejected claims are respectfully requested.

Withdrawn claims 6, 14 and 21 are cancelled reserving the right to pursue such claims in a divisional application. These claims are being canceled to expedite a Notice of Allowance since it is believed that the remainder of the claims are now in allowable form.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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